

### **DETAILED ACTION**

This application is a National Stage entry of PCT/FR03/00969 filed on 27 March 2003 and claims priority to foreign application France 02/03849 filed on 27 March 2002. A certified copy of the foreign priority document in French has been received. No English translation has been provided.

The preliminary amendment filed on 24 September 2004, in which claims 1-15 were cancelled, is acknowledged.

Claims 16-31 are pending in the instant application.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) dated 24 September 2004 complies with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609. Accordingly, it has been placed in the application file and the information therein has been considered as to the merits.

### ***Election/Restrictions***

Applicants' election with traverse of Group I, claims 16-24, drawn to the compound of claim 16, in the reply filed on 18 April 2008 is acknowledged. The applicants further elect, with traverse, compound XFG as the species for prosecution on the merits. The traversal is on the ground(s) that the Office Action dated 18 March 2008 fails to show the lack of a special technical feature. Applicants argue that the concept of claims 16-24, drawn to specific compounds comprising one or two X chains, one or two

Art Unit: 1654

F chains and at least one G chain linked to each other in a random order, is not disclosed in McDougall *et al.* This is not found persuasive because independent claim 16 is drawn to a genus of compounds that comprise one or two X chains, one or two F chains and at least one G chain linked to each other in a random order, and not drawn to a compound species. Compound XG9 of the McDougall *et al.* reference reads on generic claim 16, and thus the application lacks a special technical feature that makes a contribution over the prior art. Moreover, since claim 25 is drawn to a process for stimulating several enzymes in plants, wherein the process involves at least one compound of claim 16, and compound XG9 is present in the prior art, the application lacks unity of invention due to lack of a special technical feature that makes a contribution over the prior art.

The requirement is still deemed proper and is therefore made FINAL.

Claims 17, 21-22 and 24-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and nonelected species, there being no allowable generic or linking claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16, 18-20 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by published journal article to Vincken *et al.*

Vincken *et al.* discloses the degradation of apple fruit xyloglucan by endoglucanase. The abundant oligosaccharide units in apple xyloglucan, 7.4, 9.2 and 10.1, were treated with a crude Driselase preparation (p. 80, first column, last paragraph) to yield degraded compounds that include intermediate structures LG, XFG and XLG (p. 81, first column and figure 5). Vincken *et al.* further discloses that according to their observations and the results of Table 1, XLFG can be degraded according to one of the following routes: XLFG→LFG→XFG→FG→LG, or XLFG→XLLG→LLG→XLG→LG, or XLFG→LFG→LLG→XLG→LG (p. 81, column 1, last paragraph).

It is noted that Vincken *et al.* does not address the properties of XFG. However, the properties recited by applicants in instant claim 16, such as stimulating glutathione reductase and/or stimulating phospholipase D in plants, are considered a functional description of an inherent property. The U.S. Patent Office does not have the facilities for examining and comparing the applicants' product with the products of the prior art. When, as here, the prior art appears to contain the exact same ingredients and applicant's own disclosure supports the suitability of the prior art composition as the inventive composition component, the burden is on the applicant to show a novel or unobvious difference between the claimed products and the products of the prior art (e.g. that the products of the prior art do not possess the same material structural and functional characteristics of the claimed product). See *in re Best*, 562 F.2d 1252, 195

USPQ 430 (CCPA 1977). It is incumbent upon the applicant to provide evidence or comparative data to the contrary.

The compound of structure XFG, disclosed by Vincken *et al.*, anticipates instant claims 16, 18-20 and 23.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SCARLETT GOON whose telephone number is 571-270-5241. The examiner can normally be reached on Mon - Thu 7:00 am - 4 pm and every other Fri 7:00 am - 12 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisors, Cecilia Tsang can be reached on 571-272-0562 and Janet Andres can be reached on 571-272-0867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1654

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Cecilia Tsang/  
Supervisory Patent Examiner, Art Unit 4131

/SCARLETT GOON/  
Examiner  
Art Unit 4131